

## Pioneer Bench and Bar

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PIONEER BENCH AND BAR<sup>14</sup>

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BY JOHN J. HALLORAN

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On Thursday last occurred the One Hundredth Anniversary of the formal establishment and opening of the military fort at the point of the junction between the Des Moines and Raccoon rivers, which is known in the annals of local history and military affairs of the United States as Fort Des Moines. A little less than three years following the formal opening of Fort Des Moines, occurred an event that to the interest of the lawyers of the community is probably paramount in importance to that of the formal establishment of Fort Des Moines.

On January 17, 1846, the legislative body of the territory of Iowa passed an act for the organization of the counties of Jasper and Polk, and by the terms of said act provided for a formal organization of the two designated counties including the establishment of courts in said respective counties for the trial and determination of the rights of contending parties resident in the several counties. Prior to the passage of this act by the territorial legislative body, the territory now embraced within the limits of Jasper and Polk counties was attached to the territory lying to the east and matters cognizable in the courts of the territory now comprising Jasper and Polk counties, was apparently in Mahaska county, because it is provided by the terms of the act of the territorial legislative body,

"that actions at law or equity, in the district for the county of Mahaska, commenced prior to the organization of said counties of Jasper and Polk, where the parties or either of them reside, in either of the aforesaid counties of Jasper and Polk county, shall be prosecuted to final judgment, order or decree, as fully and effectively as if this act had not been passed."

It was further provided by said act:

"that the judicial authorities of Mahaska county shall have cognizance of all crimes for violations of the criminal law of this territory, committed within the limits of said counties of Jasper and Polk county prior to the 1st day of March next; provided, prosecutions to be commenced under the judicial authorities of Mahaska county, prior to the 1st day of March, next, and that said counties of Jasper and Polk shall have cognizance and jurisdiction of all crimes or violations of the criminal law of this territory committed prior to the 1st day of March next, in cases where the prosecution shall not have been commenced under the judicial authority of Mahaska county."

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<sup>14</sup>An address by Judge John J. Halloran, of the District Court, before a meeting of the Polk County Bar Association, at Des Moines, May 22, 1943.

It was further provided in said act that pending the formal location of the county seat of Polk county, which was to be effected through the medium of commissioners appointed for that purpose that,

"the District Court of Polk county shall be held at Fort Des Moines until the seat of justice of said county may be located."

Four days prior to the passage of the foregoing act by the territorial legislative body, the same body had passed an act to establish new counties and define their boundaries, and among the counties enumerated appears Polk county, and by the terms of that act the territorial limits of Polk county was set forth, and this act for the establishment of the new counties specifically provided the mechanics by which the District court was to be formally established and set in motion in Polk county.

Following the carrying out of the mechanics and details as set forth in said act, the first term of the District court in and for the county of Polk in the territory of Iowa was formally opened in Fort Des Moines on the 6th day of April, 1846, being ninety seven years ago the 6th of last April. Hon. Joseph Williams, a judge of the Territory of Iowa, was the presiding judge at that term. Thomas Baker was present representing the United States, being the district attorney of the United States for said territory. John B. Lash represented the United States marshal for the Territory of Iowa. Thomas Baker was present as the district attorney for the Eleventh district of said territory, and Perry L. Crossman as clerk of the district court in and for Polk county, Iowa. The court went through the formality of summoning a grand jury. The following day the grand jury reported and the next day, April 8, the grand jury returned into court and informed the court that they had no bills or presentments to make and that they had no further business to engage their attention and they were accordingly discharged, and immediately it was noted in the records of the court procedure that there being no further business for the court at this term, the court adjourned until the next term in course of law, the court having been in session but three days.

### FIRST LAWYERS ADMITTED TO PRACTICE

The second term of the district court was held in September of 1846 and found some business to transact, and at this term of the court it is interesting to note that it is recorded, that,

"Phineas M. Casady, applicant for admission to the bar on motion of Thomas Baker, having produced to the court a certificate of his having been regularly admitted as an attorney and counsellor at law in the circuit court and superior courts within the state of Indiana, said Casady having been found upon examination in all re-

spects qualified, it is ordered that he be admitted and licensed to practice as an attorney and counsellor at law and solicitor in chancery in this court, whereupon said Phineas M. Casady appeared in open court and took the oath required by law."

The September Term of the court was adjourned on October 1, 1846, to the next term which occurred in May 1847. At the May 1847 term William McKay was admitted to the bar, and this gentleman was later elected as judge of the district court, and the records of the court show that he held his first term of court in Des Moines in May 1848. At the same May 1847 term of the court R. L. Tidrick and A. D. Jones were also admitted to the practice of law in the district court of Iowa.

In the May 1849 term of the court the following was placed on the record of the court:

"On motion Barlow Granger produced to the court a certificate, given by the three judges of the Supreme court of the state of Iowa licensing him to practice in the superior and district court of this state, which certificate being satisfactory to the court, Barlow Granger appeared in open court and took the oath required by law."

"Hoyt Sherman presented to the court a certificate granted by the Supreme court, licensing him to practice in the Supreme court and district courts, which being satisfactory to the court Hoyt Sherman appeared in open court and took the oath required by law."

In passing it is interesting to note that Phineas M. Casady, Barlow Granger and Hoyt Sherman were active in the business and professional life of Des Moines during my boyhood and young manhood, and they were well known to me by sight. And in the case of Judge Casady I was privileged to meet him personally through his son Simon Casady. Mr. Casady's title of judge arose out of these circumstances; he was elected as judge of the Fifth judicial district and qualified by taking the oath of office and immediately resigned to accept the appointment by Pres. Franklin Pierce of the office of Receiver of Public Monies for lands subject to sale in this district, and never entered upon the discharge of the duties or exercised any of the powers of a judge. However, the title remained with him until his death. Judge Casady was the grandfather of Phineas M. Henry, an active member of this bar at this time.

In 1868 the District Courts of the state becoming overcrowded with business, the legislature passed an act establishing the circuit court. By the provisions of the act the two courts had concurrent jurisdiction in all civil cases, the district court had exclusive jurisdiction in all criminal cases, and the circuit court exclusive jurisdiction of probate matters.

The first judge of the Circuit Court of Polk County was Judge John Mitchell, and he was elected to that position in 1868. Judge Mitchell lived for years as a neighbor of my family. His home was on the corner of Tenth and Mulberry streets, and my old home was

on the corner of Twelfth and Mulberry streets. The two families were good friends and my memory of Judge Mitchell starts from my extreme boyhood and comes down to his death. After serving a long period of years on the Circuit Bench he retired voluntarily and took up the practice of law which continued until he died. He was a fine gentleman, a good lawyer and a good judge.

### MORE LAWYERS COME TO DES MOINES

The original small nucleus of lawyers composed of P. M. Casady, R. L. Tidrick (who also was current in Des Moines in business affairs during my boyhood), Barlow Granger and Hoyt Sherman, increased as the years went along, and we find that in 1853 one of the outstanding legal lights of the pioneer days made his appearance in Des Moines and Polk county, Daniel O. Finch. It was recorded of this gentleman during his active practice as a lawyer in the courts of this community, that he had a wider range of practice and was better known through central Iowa than almost any other member of the Polk county bar. Mr. Finch was still active in the practice during my boyhood and young manhood days, and if my memory serves me right, he was United States district attorney for the Southern district of Iowa during Grover Cleveland's first administration as President of the United States, which commenced in March 1885.

In 1854 M. M. Crocker came to Des Moines, and formed a partnership with Mr. Finch. At the outbreak of the Civil War Mr. Crocker was a partner in the practice of the law with P. M. Casady and J. S. Polk. He immediately withdrew from the practice of law upon the call for volunteers in 1861 and raised the first company organized in central Iowa, which company was incorporated in the Second Iowa Infantry, of which Mr. Crocker first became major. Shortly afterwards he was promoted to the office of lieutenant colonel and given command of the Thirteenth Infantry. At the battle of Shiloh he commanded a brigade, the commander having been wounded early in the engagement. He was afterwards promoted to the rank of brigadier general which rank he held at the time of his death, which occurred in August 1865. Mr. Crocker was a brilliant lawyer and as his record shows a brilliant soldier, and his early death caused great sorrow in this community.

Among others in the pioneer group of lawyers we find J. H. Gray, who afterwards was a judge of the District court, F. M. Hubbell, J. S. Polk, Thomas Cavanagh, J. G. Weeks, S. V. White, and William H. McHenry who later became a judge of the District court and was the father of the late Judge William H. McHenry whom a great many of us here present remember favorably as a judge of this court and as a practicing lawyer in Des Moines.

## LAWYER WHO BECAME GREAT DIPLOMAT

In 1857 one of the most colorful characters known to the city of Des Moines and the bar of Polk county, took up his residence in Polk county, John A. Kasson. Mr. Kasson was a native of Vermont, being born in that state on January 11, 1822. He was originally admitted to the bar of the state of Massachusetts in which state he took up the practice and continued therein for about five years. He then moved to St. Louis, Missouri, where he remained in the practice of the law for about six years, and in 1857 because of failing health he removed to Des Moines. Mr. Kasson had a magnetic personality, was a finished public speaker and might be easily classed as an orator of the first rank. He was the chairman of the Republican state central committee for Iowa in 1858. In 1860 he was a delegate to the Republican national convention at Chicago and helped nominate Abraham Lincoln for the office of President. He helped write the platform of that convention and took an active part in the election following the nomination, and in 1861 President Lincoln appointed him as First Assistant Postmaster General of the United States. The nomination of Mr. Kasson for this position was the second nomination made by Mr. Lincoln after he took office. In 1862 the state of Iowa became entitled to six representatives in congress and the new Fifth congressional district in Iowa was established and composed of twenty-three counties including Polk county. While Mr. Kasson was still engaged in Washington with his duties as Assistant Postmaster General, the Republican convention of the Fifth congressional district tendered him the nomination for congress. He accepted the nomination and resigned his official duties in connection with the postoffice department in Washington, and in the succeeding election he was elected to congress by a very good majority. He was re-elected to congress in 1864, and at the end of his second term he was requested by the Postmaster General to undertake the duties of negotiating with the various European governments in regard to postage rates between the said governments and the United States. He accepted the commission and during his absence he was nominated and elected as a member of the General Assembly of Iowa from Polk county and continued for three terms, during which service he actively promoted appropriations for the erection of a suitable state capital building. In 1872 he was an active candidate for congress and following a spirited campaign for the nomination was nominated and subsequently elected. In 1874 he was re-elected to congress and in 1877 was appointed by Pres. Rutherford B. Hayes as United States Minister to Austria. During his absence in Austria he was nominated by the Republicans as the candidate for the 47th congress of the United States to which he was elected and re-elected for the

second term. Mr. Kasson, as I have already stated had a magnetic and winning personality. He was polished in his speech and manners and was very impressive as an orator on the public platform, whether it was in politics or in connection with any other matter in which the public had concern. In the memorable free silver campaign of 1896, although quite advanced in years and with some physical impairment, he made a speech in Des Moines which I was privileged to hear and on that occasion he demonstrated that his mind was as active and as keen as it was in his prime, and frequently during his speech there were flashes of the force and vigor of expression and of real oratory that he was noted for during his earlier years in this community. Mr. Kasson died about 1910 in his eighty-ninth year.

### STRONG MEN IN THE SECOND GROUP

Others of the pioneer group of lawyers were Judge George G. Wright, Judge Chester C. Cole and Judge Josiah Given. Judge George G. Wright came to Des Moines in 1865, and Judge Cole came to Des Moines in 1857. Judge Wright and Judge Cole were members of the Supreme court of the state of Iowa, subsequently retiring and taking up the practice of law in Des Moines. They were both men of outstanding ability as lawyers and equally so as judges of the Supreme court. They both attained prominence in the practice and were both deeply interested in the promotion of proper and correct legal education of young men desiring to enter the practice of the law. In 1865 they organized the first law school in Des Moines. Their time being occupied in their service on the Supreme court bench, they devoted their evenings to the teaching of the young men matriculating in their school, and among other students it is interesting to note that the son of Judge George G. Wright, Thomas S. Wright, the father of Craig Wright of this bar, received his legal education in this school after his return from the Civil war. Judge Wright had four sons and three of them became outstanding lawyers in the practice of the law in Iowa—Thomas S. Wright and Carroll Wright in Des Moines, and Craig Wright in Sioux City. The school which these two outstanding men organized in 1865 was ultimately taken over by the State University at Iowa City, and from the start made in 1865 in Des Moines has grown the magnificent law school of that institution. After it was removed to Iowa City both Judge Wright and Judge Cole continued as instructors in the school at Iowa City. From 1872 to 1877 Judge Wright represented the State of Iowa in the senate of the United States. He died January 11th, 1896. Judge Cole continued his interest in the education of young men and young women in the science of the law almost up to the time of his death. For years

he was dean of the law school of Drake University and was one of my teachers when I was a student in that institution. He was also active in his professional life practically up to the time of his death which occurred at the ripe old age of 89 years.

In passing I want to tell of an interesting episode that transpired in the professional life of Judge Cole. Years ago there was a famous case tried in the district court of Polk county, known as the Mabel Schofield murder case in which one Charles Thomas was accused of the murder of Mabel Schofield. He was convicted in the district court of Polk county and on appeal to the Supreme court his conviction was affirmed. Following the affirmation in the Supreme court Judge Cole was retained to take the case to the United States Supreme court, it being claimed that Thomas was denied a fair trial by circumstances developing during the progress of the trial by the adjournment of the court sessions from the court room in the courthouse to the auditorium in the old Y. M. C. A. building on the corner of Fourth and Grand avenue. The attempt to establish jurisdiction in the Supreme court of the United States occurred before the present rule was in force whereby the court privately determines whether there is a federal question in the case or not, and in each case the question of the jurisdiction of the Supreme court was determined upon the submission of the case to the court following argument. Judge Cole recited the incident to me after he had returned from an unsuccessful effort before the court. I asked him something about his experience before the court and his oral argument, he said "As I progressed with my oral argument," and quoting his own language, "I observed that I was having the close and undivided attention of every member of the court, and I flattered myself as I went along that I was making a favorable impression, but the celerity with which they disposed of my argument and my contentions demonstrated to me that their interest in me was because they looked upon me as an antique and not because of the profundity of my argument." And it developed that he was correct in his analysis, because the judges of the Supreme court had learned that he, Judge Cole, was the oldest lawyer in point of years of age who up to that time had ever made an oral argument in the United States Supreme court and the interest of the judges was centered in observing the physical agility and mental alertness of a man of that age, rather than paying much if any attention to his argument.

### DRUMMER BOY AND SOLDIER OF TWO WARS

Judge Josiah Given was born in the state of Pennsylvania. In his boyhood he worked with his father and an elder brother as a blacksmith in Holmes County, Ohio, to which place the family had



moved. He was largely, if not entirely, a self-educated man, there being but few schools in the region where he grew to young manhood. At the outbreak of the war with Mexico he enlisted as a drummer boy and served in that capacity for a short time with a recruiting squad but was finally rejected for active service on account of his youth. Later however, in the spring of 1847 he enlisted as a private in Company G, Fourth Ohio Infantry, and was appointed as a third corporal. He went with the troops to Mexico and served through the war. Following the close of the Mexican war he returned to his home in Holmes county, Ohio, and began the study of law in the office of J. R. Barcroft and William Given, who was an elder brother of the judge, and in 1850 he was admitted to the bar in Ohio. He practiced in Holmes county, Ohio, until 1856 when he removed to Coshocton, Ohio, and continued practicing law there until the Civil war. He was trying a case in court when a telegram announcing the firing on Fort Sumpter was read from the bench, he closed his law books, left the court room, and did not return until after the close of the Civil war. He organized Company K, Twenty-fourth Ohio Volunteer Infantry, and entered the service as captain. In the fall of 1861 he was promoted to the rank of lieutenant colonel, Eighteenth Ohio. He served with this regiment some eighteen months, and in that period of time took part in the Battles of Bowling Green, Nashville, etc. He was slightly wounded at Stone River. In the spring of 1862, he was made Colonel of the Seventy-fourth Ohio Volunteer Infantry, and went through the battles of the Atlanta campaign, and during a portion of that time, commanded the Third brigade of the Third division of the Fourteenth army corps. At the close of the war he found himself physically disabled with rheumatism, and he tendered his resignation from the military service of the government.

He was elected postmaster of the U. S. House of Representatives in the Thirty-ninth Congress, his name being presented by Gen. James A. Garfield, of Ohio, afterwards President of the United States. He served for two years in this official capacity and then returned to Ohio and remained a year in Ohio, and then removed to Iowa. He reached Des Moines May 1, 1868, and began to practice his profession. In 1869 he was appointed deputy commissioner of internal revenue. He resigned this position in 1871, and in January 1872, he was district attorney for the Fifth judicial district of Iowa, and served in that capacity three years. After the close of his service as district attorney, he engaged in the private practice of the law as a member of the firm of Barcroft, Given & McCaughan. The Barcroft of this firm, as I understand it, was the same J. R. Barcroft in whose office Judge Given studied law in Millersburg, Holmes county, Ohio. Judge Barcroft, as he was known in the profession in Des Moines, having removed to Des

Moines from Ohio. Judge Given succeeded Judge Mitchell on the Circuit court bench of the Fifth judicial district in 1880, and continued to serve as such judge until the circuit court was discontinued by act of the legislature with the close of the year 1886. Following the discontinuance of the circuit court the jurisdiction of the district court, as now, embraced all matters cognizable in equity, civil law, criminal law and probate, and the Ninth district, being Polk County, was given three judges by act of the legislature, and in 1886, Judge Given, Judge William F. Conrad and Judge Marcus Kavanagh were elected, and Judge Given continued to serve as district judge until 1889, in which year he resigned to fill an appointment on the Supreme Bench.

Like Judge Mitchell, Judge Given was a neighbor of my family, Judge Given living on the corner of Tenth and Walnut Streets, just one block north of Judge Mitchell. Judge Given was the father of four sons and he took a deep interest in boys. We boys of the neighborhood frequently contacted him on the street when we were going to and from school, and he always spoke in a cheery way to us and frequently stopped to inquire how we were getting along in school. He was a man of rugged physique and rugged features. After he was appointed to the Supreme bench, and living quite a remote distance from the state capital, and transportation through the medium of the street cars being of a limited character, he solved the problem of transportation by riding horseback from his home on the corner of Tenth and Walnut streets to the state capital and back daily, and I still have a very vivid mental picture of Judge Given astride his cream colored pony riding to and from his official duties as judge of the Supreme Court.

### LATER ORNAMENTS OF THE BAR

I have already mentioned Thomas S. Wright, the son of Judge George G. Wright, who became one of the outstanding lawyers of the pioneer group, although being some time later in the period of pioneer days than these lawyers who have been heretofore mentioned herein, and contemporaneous with Thomas S. Wright was Thomas F. Withrow at one time Supreme court reporter which in pioneer days than other lawyers who have been heretofore mentioned prominence in Des Moines and Iowa, he was taken to Chicago by the Rock Island railroad as general counsel, and remained with them until his death, when he was succeeded in that office by Thomas S. Wright who also remained in the position as general counsel of that company until his death.

Also contemporaneous with Mr. Wright was John S. Runnells and A. B. Cummins. John S. Runnells was a very brilliant man and an outstanding lawyer and orator. After a period of years in

the practice in Des Moines, he removed to Chicago leaving here, as I remember it, in the later eighties or early nineties. At the formal opening and dedication of the Auditorium in Chicago, he made the principal address which was a brilliant effort, and it was said that on that occasion he addressed the most cosmopolitan audience ever addressed by man. All of the representatives of the European and Far East countries were present from Washington. The occasion was one that would inspire a supreme effort on the part of a man of the ability of Mr. Runnells, and he made the utmost of the occasion completely. Some few years later he was elected president of the Pullman Car Company and remained in that capacity for a long period of years.

A. B. Cummins, as we all know, attained outstanding prominence as a lawyer and was elected governor of the State of Iowa for three consecutive terms, and upon the death of Senator Allison succeeded Senator Allison as United States Senator from Iowa, resigning the governorship of Iowa to take up his new duties as such senator. Mr. Cummins was not only an able lawyer but was a platform speaker of great magnetism. He died in a comparatively short period after he retired as United States senator.

Among the contemporaries of Thomas S. Wright, John S. Runnells and A. B. Cummins, were Frederick W. Lehmann, B. F. Kauffman, N. T. Guernsey, W. L. Read and his brother John Read, J. R. Barcroft who has already been mentioned, Carroll Wright, C. H. Gatch, Galusha M. Parsons, H. Y. Smith, Judge C. H. Dudley, Judge Chas. A. Bishop, Judge Wm. Connor, Chas. H. Sweeney, E. T. Morris, James B. Weaver, Crom Bowen, Clinton L. Nourse, J. M. St. John, and a number of others whose names do not now come to my memory.

### CALLED TO HIGH NATIONAL SERVICE

Frederick W. Lehmann developed into one of the outstanding lawyers not only of the state of Iowa, but was recognized as such nationwide. After he had a successful career at the bar in Des Moines he removed to the city of St. Louis, Missouri, to become assistant general counsel of the Wabash railway. After remaining in charge of the legal work for that company for several years, he resigned and entered the general practice of law in St. Louis. In the years of his residence in Des Moines he was one of the leading democrats of the state. In the memorable free silver campaign of 1896, he could not follow the leadership of the magnetic orator from the Platte River, William Jennings Bryan, and was an advocate of sound money and supported Palmer and Buckner. During the administration of President Taft he was named solicitor general of the United States, and was classed as one of the best lawyers to

ever occupy that official position and was so recognized by the judges of the Supreme court of the United States. Mr. Lehmann resigned before the end of the Taft administration and returned to St. Louis to the private practice. After his retirement to the private practice he came to Des Moines to deliver an address on "Justice John Marshall and the Constitution of the United States," before the local bar association. It was my privilege to hear that address and it was the consensus of all the lawyers present that it was one of the most marvelous addresses ever delivered in the city of Des Moines. Mr. Lehmann was the father of Fred W. Lehmann, Jr., one of the active practitioners at the bar of Polk county today.

B. F. Kauffman was a very brilliant lawyer, and was a product of that law school established by Judges Wright and Cole which has already been referred to, and he rapidly developed into a very able lawyer. During a period of years he was associated in the practice of law with C. C. Nourse who likewise was one of the outstanding lawyers of his day in the state of Iowa and the midwest. Mr. Kauffman died much too early in life but not until he had left the impress of his ability and his personality upon the community and it still remains a vivid memory to those who were fortunate enough to be a contemporary of his in the life of Des Moines.

N. T. Guernsey, generally known by his associates in the practice in Des Moines as "Nat Guernsey" came to Des Moines after he had finished his studies, including his law course, at Yale, and entered the office of Nourse & Kauffman. Many years after Mr. Guernsey told me that he credited Mr. Kauffman with making a lawyer out of him. He stated that he was like all young lawyers starting in the practice of law, rather long on theory but very short on practical application. Mr. Kauffman had a rigid rule that when he turned over a piece of business to any young man in his office to handle it was definitely understood that that young man was not to annoy him with any questions in regard to doing that piece of business. Mr. Guernsey stated that many times in the early days of his work in the office of Mr. Kauffman, items of business were turned over to him that with his limited knowledge of the practice and procedure in the courts of Iowa, he did not know how to proceed and frequently he would get up from his desk and go to the door of Mr. Kauffman's private office with a fixed determination to go in and ask Mr. Kauffman what he should do in the given instance, and when he placed his hand on the knob of the door his courage failed him and he went back to his desk and fought it out with himself. He frankly admitted in the conversation that he had been in error in many instances in his final determination as to how to handle the business but that experience taught him self-reliance and confidence in his own judgment, and if he made a mistake he never made it the second time. In Mr. Guernsey's

practice he adopted the same cardinal rule that Mr. Kauffman had enforced with him, in connection with any young man that was working in his office. Mr. Guernsey developed a large and lucrative practice in the city of Des Moines which he finally surrendered when he removed to the city of New York to become general counsel of the American Telegraph and Telephone Company which position he occupied for a long period of years and proved a very valuable man in the handling of the legal affairs of that company. He died in comparatively recent years still a resident of New York.

Time will not permit me to set forth herein the qualities and abilities of the other lawyers whose names have been mentioned herein as contemporaries of Mr. Wright, Mr. Runnells, and Mr. Cummins. Suffice it to say that all those whose names I have mentioned were real lawyers and real men. I cannot leave the discussion of this galaxy of the brilliant lawyers of those days without mentioning the lovable qualities as a man of W. L. Read. Will Read was not only one of the finest lawyers of his day, but was one of the most lovable characters whom I have ever known.

#### EDITORS AND TEACHERS OF LAW

Another item of outstanding interest and which deserves mention in connection with a review of this character of the pioneer bench and bar of Des Moines and Polk County, is the fact that in 1867 there was founded in Des Moines a legal journal known as *The Western Jurist*, which soon took its place as one of the outstanding journals of its kind in the country. In 1866 William G. Hammond removed from Anamosa, Iowa to Des Moines, and in 1867 started the publication of that journal. In his chosen field he soon demonstrated that he had marked ability. *The Jurist* was a bi-monthly publication and among its contributors and editorial writers over a period of years of its existence was George G. Wright, Thomas F. Withrow, Thomas M. Cooley, who was at one time a member of the Supreme court of Michigan and author of the text books *Cooley on Torts*, *Cooley's Constitutional Limitations* and other legal volumes. Judge John F. Dillon who at one time was a member of the Supreme court of the state of Iowa and removed to the city of New York and was the author of *Dillon on Municipal Corporations* and became the recognized authority on municipal law throughout the United States, Judge Chester C. Cole, Charles C. Whittlesey of the St. Louis Bar, Hon. C. K. Gilchrist of Oskaloosa, Kansas, Norman L. Freeman of Springfield, Illinois, state reporter of that state and many others of equal standing throughout the length and breadth of the United States. The publication continued in its existence until about October of 1883 when it ceased and its life ended. Mr. Hammond shortly after his removal to Des Moines

became a member of the faculty of the law school established by Judges Wright and Cole in 1865, and he continued his teaching connection with that school in Des Moines until the school was removed to Iowa City and became a unit of the State University, at which time Mr. Hammond was offered the position of resident professor and director of the department, which offer he declined, but later satisfactory details were worked out and Mr. Hammond was transferred from Des Moines to Iowa City and was placed at the head of the law department of the State University of Iowa, and he became one of the recognized legal educators of the midwest.

This occasion and this review of the pioneer day of the bench and bar of Des Moines, would not be complete without a brief reference to several of the unique characters that appeared upon the stage of action in the courts of this community, from time to time as the years progressed. When I was admitted to the bar, which occurred in May 1895, there were three such unique characters practicing in the courts of Polk county. One of these characters was known to the members of the bar as "Deacon" Williams. I do not know that anybody in the profession knew anything about the gentleman's first name. Everybody knew him as "Deacon" Williams. He was a product of the days when admission to the bar was controlled by the local court and the applicant was admitted upon motion after a committee of the local bar had been appointed by the court to investigate and report on the qualifications of the applicant. It was frequently said in those days that about the only examination that the applicant was subjected to was his ability to take the committee out for a good dinner and pay for the same. Whether that was true or not I do not know, but certain it is that the committee that acted upon "Deacon" Williams must have closed its eyes and its ears, because aside from having a general smattering of a few of the fundamentals of the law he knew very little about the subject and as a result his practice was largely confined to the Justice of the Peace courts. Often in such small matters he found himself puzzled and he had fallen into the habit of seeking advice from one of the members of the local bar who was good natured, E. T. Morris, usually known among the members of the profession as "Ed" Morris. The Deacon imposed upon "Ed" so frequently that he finally got to be a nuisance.

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The "Deacon" was a blustery and windy individual and one of his pet characterizations of an opponent of his client in any lawsuit was to charge him with being "pregnant with rascability." He never argued a case without stating to either the court or the jury, as the case might be, that the adversary of his client was not to be relied upon because he was "pregnant with rascability."

Another unique character was Hod Carpenter. Hod lived over in east Des Moines. He was tall and spare of build. He had a swarthy skin and the features of an Indian including straight black hair. Some people who professed to know said he had Indian blood in his veins. Whether that was true or not, he certainly looked as though it might be. He had a high pitched voice, but unlike "Deacon" Williams, Hod had some knowledge of legal principles. His manner of expressing himself was peculiarly original with Hod. On one occasion when he was trying a case before a jury in a justice of the peace court in east Des Moines in which he represented the plaintiff, he felt the necessity of properly classifying the defendant in his argument to the jury and he said:

"Gentlemen of the jury, this defendant is the most contemptible being on God's footstool. He is so ornery and contemptible that he is not fit to live, he ought to be dead and buried in the south-east corner of 'hell where a good stiff northwest breeze would blow hot ashes in his face for all eternity."

This unique manner of expression was seldom wanting in any case that Hod was in. When it was known in the immediate neighborhood of a justice of the peace court that Hod had a case to try he usually had quite a group of listeners knowing that they would not be disappointed in some expression comparable to that quoted above.

### GENIUS AND TALENT FIND EXPRESSION

I hesitate to mention the name of Fitch Conrad in the same connection with "Deacon" Williams and Hod Carpenter. Fitch Conrad was, I believe, a nephew of Judge William F. Conrad of this court. He had a pretty good knowledge of the law, which distinguished him from the other two gentlemen named, and he had the confidence of all the courts of Polk county from the justice of the peace court to the district court. He was somewhat of a composite of David Harum and Will Rogers. He had the humor and philosophy of Will Rogers and the power of expression both in writing and orally that was true of Rogers. Over a period of years he contributed almost weekly an article to the press of Des Moines under the heading of "My Views," in which he discussed current items of public interest, always from the humorous standpoint, but with biting sarcasm in the application of his usually sound philosophy and judgment. These weekly articles came to be looked for by the readers of the public press in Des Moines and they were the subject of conversation among men generally on the day following the publication, somewhat comparable to some of the radio programs that are current today. He had an original manner of expressing himself in his arguments in court and frequently would use language in such expression

which coming from another lawyer at the Polk county bar would probably subject the lawyer using the language or the expression to a fine for contempt. But the judges and the bar recognized the fact that it was Fitch Conrad who used the language or gave expression to the particular thought, and that he was a sort of a privileged character and this kept him immune from any punishment of that kind.

As an illustration, on one occasion he was defending some man charged with a crime before Judge Bishop of this court. Judge Bishop was a fine judge, very calm and deliberate in his speech and in his handling of the affairs of the court, but periodically he would get in the frame of mind where he would be urging the lawyers in the case before him for more speed. It so happened that he had one of these spells in this case and he had been urging the county attorney and Fitch to speed up the trial all the morning of this particular day. At noon he adjourned court as usual until two o'clock, and promptly at two o'clock he came on the bench and ordered the bailiff to open court, which was done. Judge Bishop said, "Proceed gentlemen." At which time the county attorney arose and said, "If the court please, counsel for the defendant has not arrived." Judge Bishop said: "Counsel for the defendant was advised at the adjournment that this court would convene at two o'clock, it is now two o'clock. Proceed, gentlemen." The county attorney had no alternative but to go ahead interrogating the witness who was on the stand at the adjournment of the court, and he was progressing with that examination in the absence of counsel for the defendant for a period of some five or ten minutes when Fitch came through the door of the court room and took in the situation at a glance; he walked down deliberately in front of the court and held up his hand and said, "Judge, judge, what in the hell does this mean?" If it had been any other lawyer at the Polk county bar he would have had a very stiff fine imposed against him, as Judge Bishop was a stickler for maintaining the dignity of his court, but instead he said; "Mr. Conrad, this court adjourned until two o'clock; it is now ten minutes after two, proceed gentlemen."

On another occasion Fitch had defended a man for a serious crime before Judge Church who came down from the northern part of the state on an exchange of judges to take care of a case in Judge Church's district that he was disqualified to try, and the accused was found guilty by the jury. The time arrived for the pronouncement of the judgment; Judge Church asked the usual questions of the defendant as to whether or not he had anything to offer as to why judgment should not be pronounced, and he responded that he didn't have anything to say. Judge Church turned to Fitch and said, "Perhaps counsel for the de-



fendant will have something to offer." Fitch arose and said, "No, no, Your Honor. I had my say to the jury, now let nature take its course, let nature take its course." Fitch had the friendship of every man that he was acquainted with at the Polk county bar and upon his death, which occurred in comparatively recent years, the expressions of regret among the legal fraternity were as numerous and as sincere as with any lawyer who has passed from the realm of life into the Great Beyond during the period of my years in the practice in this community.

This review has already covered a wide field and has occupied more time than probably you members of the bar can well afford to give on this occasion, but in closing I want to leave with you this thought, that on this occasion, wherein we have refreshed our minds and our recollections of the historical figures who have come and gone in the practice of law in this community; and as we call up in our mind's eye a picture of these men of brilliant attainments and accomplishments in their chosen profession and who have gone to their final reward, that we resolve that in so far as it lies in our power, we will emulate their example, so that it may be truthfully said of us when we answer the final summons what can be truthfully said of them, "They were great men and great lawyers."

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### CHIEF POWESHIEK AT DES MOINES

The treaty of 1842, made by Gov. John Chambers at Agency, for the cession of the Des Moines river valley, was signed by chiefs of the Foxes and chiefs of the Sacs separately, in all forty-four in number; and heading the list on behalf of the Foxes was the name of "Pow a shick", as it was spelled in that document. He had also signed the treaty of 1836, made by Gov. Henry Dodge, for cession of the "Keokuk Reserve." He had signed the treaty of 1832, with Gen. Winfield Scott for the first "Black Hawk Purchase." The first of the chiefs of the Foxes signing the treaty of 1825, arranged by Gen. Lewis Cass, was "Ti-a-mah". Powesheik is credited with having greater influence than any other in preventing the war started by Black Hawk becoming general, and he refused to join in the hostilities and was followed by Chief Keokuk. He was of the ruling Bear clan of the Foxes.

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